

ARTICLE 12 DEFINITIONS

For the purposes of this Bylaw certain words and terms used herein shall be interpreted as follows:

- 12.00 Aggregated accessory uses: One or more uses customarily accessory to principal residential uses as allowed in this Zoning Bylaw, where such accessory use(s) are aggregated, used and shared in common by the occupants of more than one residential dwelling unit located on the same property or a different property from the accessory use(s).
- 12.01 Amusement device: Any mechanical or electronic game, amusement, sport or test of skill including, but not limited to, videogame machines, pinball machines, pool or billiard tables, or similar mechanical or electronic devices.
- 12.02 Apartment: A residential use consisting of one or more buildings, each building containing no fewer than three (3), nor more than twenty-four (24) dwelling units. Apartment dwelling units may share internal accessways and entrances and need not have separate exterior entrances on the ground level.
- 12.03 Aquifer: Geologic formation composed of rock or sand and gravel that contains significant amounts of potentially recoverable ground water.
- 12.04 Arcade: Premises, or portions of premises, where six or more amusement devices are maintained for public or private membership use.
- 12.05 Bar: A food and drink establishment or a part of such an establishment devoted primarily to the service and consumption of alcoholic beverages on the premises, and in which the service of food is only incidental.
- 12.06 Bed and Breakfast: A use accessory to a dwelling unit consisting of overnight lodging with breakfast. In a bed and breakfast no meals other than breakfast shall be served, and no breakfast shall be served nor shall any retail and consumer services be provided to any member of the public not lodged as an overnight guest.
- 12.07 Congregate Housing For the Elderly And Handicapped: A building or buildings, or a portion thereof, arranged or used for lodging by elderly and handicapped residents, as defined in Chapter 121B of the General Laws, wherein meals may be served in one or more group dining facilities.
- 12.08 Converted Dwelling: A use containing one or more dwelling units created predominantly through the conversion of existing residential or non-residential space, where said units are located in or attached to an existing residence of ten or more years of age, or a detached structure constructed prior to 1964, located on a lot where at least one dwelling unit lawfully existed prior to the conversion. A converted dwelling use may include portions of dwelling units created through new construction, but no new dwelling unit in a converted dwelling use may be created as a result of new construction alone. Proposed multi-unit residential uses not meeting the thresholds established for the conversion of existing space shall be considered to be the residential use category most closely corresponding to the total number of new dwelling units they include and the nature of the use, as determined by the Zoning Enforcement Officer or Special Permit Granting Authority or Permit Granting Board, as applicable.
- 12.09 Discharge Area: That portion of the surface area of an aquifer which, because of an overlying layer of impermeable material such as clay, tends to discharge more precipitation and stream flow out of the watershed as surface runoff than it allows to percolate into the ground and recharge the aquifer. Where an overlying layer is not completely impermeable as a result of natural conditions or human activity, a discharge area can be a potential location for the introduction of groundwater pollution.
- 12.10 Drive-up restaurant: A restaurant, refreshment stand, fast-food eatery, or other similar place for the service of food or beverages, some portion of which is served to persons remaining in their vehicles outside the building, via a drive-up window or other similar method.
- 12.11 Dwelling Unit: A single residential unit providing complete independent living facilities for a household of one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

- 12.12 Dwelling Unit, Attached: A building containing three or more units, each unit having a separate entrance.
- 12.13 Dwelling Unit, Detached: A single family dwelling, containing one unit, which provides complete independent living facilities.
- 12.14 Dwelling Unit, Two Family Detached (Duplex): A single residential building containing two (2) dwelling units, arranged vertically one above the other, or horizontally side by side, each with a separate entrance.
- 12.15 Dwelling Unit, Zero Lot Line: A single family unit, sited on one or more lot lines, with no yard along these lot lines. A zero lot line unit may be attached to an adjoining zero lot line unit provided they are separated by a party wall, with no openings along the dividing lot line.
- 12.16 Family (Household):
- 12.160 An individual residing in one dwelling unit; or
- 12.161 A group of persons related by marriage, civil union, blood, adoption, guardianship, or other duly authorized custodial relationship residing together in one dwelling unit; or
- 12.162 A group of unrelated individuals, not to exceed 4, residing cooperatively in one dwelling unit. In this instance, an accessory use as described in Sections 5.010 and 5.011 is not permitted.
- 12.163 A group of individuals, regardless of relation, residing in congregate or similar group housing for the elderly or disabled, in half way houses, or in other group residential uses authorized and operated under state and federal law.
- 12.17 Farmland: Land under agricultural use as defined in MGL Ch. 128, Section 1A, and MGL Ch. 61A, Sections 1 and 2, inclusive, as amended, and, including for the purposes of this Bylaw, the lawful propagation and raising of wild or game species under applicable state and federal law, and, land under agricultural use whose soils are classified as prime, unique, or of state and local importance by the USDA Soil Conservation Service. The provision of MGL Ch. 40A, Section 3, shall apply.
- 12.18 Floor Area Ratio: The ratio of gross floor area of all buildings to the lot area.
- 12.19 Groundwater: All the water found beneath the surface of the ground. More specifically, the slowly moving subsurface water present in the aquifer and recharge areas.
- 12.20 Habitable Space: The gross square footage of the enclosed interior space of a residential building or dwelling, which space is used or intended to be used for living, sleeping, cooking, or eating purposes. Includes within any single dwelling unit any rooms containing toilets, bathtubs or showers, as well as any laundries, pantries, foyers, communicating corridors, closets and storage spaces, but excluding any such spaces where they are used in common with other dwelling units.
- 12.21 Hazardous Material: Any material or combination of materials, which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to a present or potential threat to human health, safety or welfare or to the environment when improperly stored, treated, transported, disposed of, used or otherwise managed. This definition includes all substances which are included in the definition of hazardous materials contained in M.G.L. Chapter 21C.
- 12.22 Hostel: An overnight lodging facility licensed by a recognized national or international hostelling organization, offering temporary lodging to members of such organizations and other travelers, as well as educational programs and other goods and services related to hostelling. Lodging for non-members shall not exceed fourteen (14) days in any four (4) month period, with a limit of no more than seven (7) consecutive days. Lodging for members shall not exceed thirty (30) days in any four (4) month period, with a limit of no more than fourteen (14) consecutive days.
- 12.23 Hotel or Motel: A structure used or designed for overnight lodging, and which may also provide a restaurant and hotel/motel-related retail and consumer services to lodgers and the public.

- 12.24 **Housing, Affordable:** Affordable housing units are units which may be rented or purchased by those who meet the guidelines for maximum annual income for low-income or moderate-income family or household. The income limit for low-income shall be 80% of the median income for Amherst and the income limit for moderate-income shall be 120% of median income for Amherst.

Median income for Amherst shall be as calculated by the U.S. Department of Housing & Urban Development, or any successor agency and shall be adjusted for family size.

- 12.25 **Inn:** A structure used or designed for overnight lodging, and which may also provide a restaurant and related retail and consumer services to lodgers and the public. An inn shall be located in a historic building 75 years or more in age.

- 12.26 **Limousine:** A livery vehicle primarily garaged or engaged for hire in the town of Amherst, which is used to carry passengers under pre-arranged contract for an agreed-upon hourly fare, or; operates as a charter, business courtesy, employee shuttle, customer shuttle, or; a motor vehicle on a regularly scheduled route without the use of a taximeter.

- 12.27 **Livestock and Poultry:** All domesticated mammals and birds that are raised and kept for agricultural purposes, including but not limited to horses, ponies, donkeys, mules, cattle, goats, llamas, alpacas, swine, sheep, rabbits, hares, and fowl, which shall be defined as including, but not limited to, chickens (hens and roosters), turkeys, pigeons, capons, ducks, geese, swans, pheasants, peacocks, guinea fowl, emus, and all wild mammals and game birds raised and kept in accordance with state and local law. Except as provided for under Section 5.014, livestock and poultry shall not include domesticated animals raised and kept as pets such as dogs, cats, rabbits, various species of rodents, exotic birds, reptiles, fish, amphibians or wild animals as provided for in accordance with state and local law.

- 12.28 **Lodging or boarding house:** A residential use housed in a single dwelling or in part of a dwelling where no fewer than six (6) but not more than ten (10) unrelated persons are let or sublet lodging in private rooms or quarters not constituting dwelling units for definite periods of time, and where there are no overnight stays by transient guests. The building shall be occupied by the owner of the property or the manager of the use. Meals may or may not be provided, but only one common kitchen facility shall exist and no meals shall be provided by the establishment to members of the general public not lodged in the establishment. Lodging or boarding houses shall not include hotels, motels, inns, sorority, fraternity and cooperative residences licensed or regulated by agencies of the Commonwealth. Lodging or boarding houses shall abide by all applicable state and local laws and regulations governing lodging houses, boarding houses, or rooming houses.

- 12.29 **Lot, Buildable:** Any lot meeting the minimum lot area and lot frontage requirements of the zoning district in which it is located and which contains either 90 percent of its total lot area, or 20,000 square feet, in contiguous upland acreage.

- 12.30 **Medical Care Providers:**

12.300 **Other Medical or Dental Professionals:** A health care professional who may provide patient care, patient support, or ancillary medical services under the supervision of a principal health care provider. For the purposes of this Bylaw, this shall include nurse practitioners, registered or licensed practical nurses, physicians' assistants, dental hygienists, sonographers, phlebotomists, and similar medical professionals.

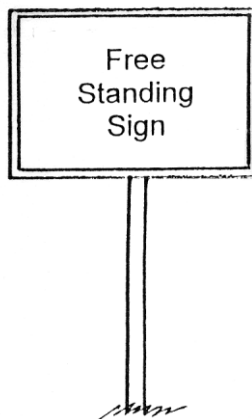
12.301 **Principal Health Care Provider:** A health care professional licensed to operate as a physician or dentist in the Commonwealth of Massachusetts, who provides care to patients and may refer patients or receive referrals for specific medical or dental services, particularly in an outpatient setting. For the purposes of this Bylaw, principal health care providers shall include physicians, dentists, and physician specialists such as psychiatrists, dermatologists, dental surgeons, and ophthalmologists.

12.31 Medical Uses:

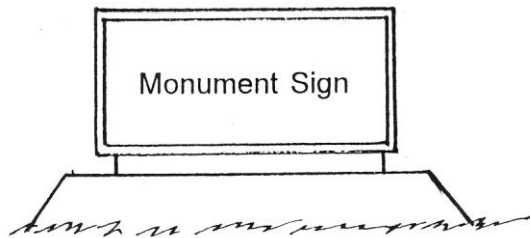
- 12.310 Clinic or emergency care facility: Any private or public health clinic, or other similar community health facility providing diagnosis and ambulatory emergency medical care to persons on an exclusively outpatient basis as a principal use. A clinic or emergency care facility may also be accessory to a medical center, hospital, or similar facility.
- 12.311 Medical center: Two (2) or more medical group practices, or medical offices, or combination thereof, operating in the same building or on the same property, which may also contain associated principal or accessory uses such as diagnostic testing facilities, physical therapy, therapeutic or counseling services, pharmacies, medical supply retailers, and similar uses. A medical center shall not include medical residential facilities.
- 12.312 Medical group practice: A Medical, dental, or psychiatric practice larger than a medical office, including principal health care providers, other medical or dental professionals, and administrative or clerical staff, providing services on the premises. A medical group practice and its principal health providers shall offer medical services within one area of medical practice (ex., general practice, orthopedics, cardiology, obstetrics and gynecology, oncology, etc.) or within a small number of closely related areas of medical practice, and may also contain in-house diagnostic testing facilities, medical counseling services, and similar services, or may be associated with other similar accessory or complementary principal uses in the same building.
- 12.313 Medical office: A Medical, dental, or psychiatric practice offering medical or dental services on an outpatient basis and including a total of no more than the full time equivalent of three (3) principal health care providers and two (2) other medical or dental professionals, exclusive of administrative or clerical staff, providing services on the premises. A medical or dental office may also contain associated in-house ancillary services such as in-house diagnostic testing facilities, medical counseling services, and similar services.
- 12.32 Oil: Insoluble or partially soluble crude or fuel oils, lube oil, sludge, asphalt or partially insoluble derivatives of mineral, animal or vegetable oils.
- 12.33 Owner-Occupant(s): One or more natural persons who, in their individual capacity as distinct from any representative capacity, own(s) a whole or undivided interest in fee simple of certain real property and at least one of whom occupies a dwelling unit thereon as his or her principal residence (see definition).
- 12.34 Permit Granting Board: That Board designated by the Zoning Bylaw to hear and decide Site Plan Review applications.
- 12.35 Pets: Domesticated animals such as dogs, cats, rabbits, selected exotic mammals (pot-bellied pigs, dwarf goats, etc.), various species of rodents (rats, mice, guinea pigs, hamsters, ferrets, chinchillas, etc.), exotic birds, reptiles, fish or amphibians. The keeping of wild animals, exotic birds, fish, reptiles, and amphibians as pets is subject to the requirements of M.G.L. Ch. 131, Sections 23, 25 and 26A, as amended, and 321 CMR 2.12 and 9.01, as amended.
- 12.36 Recharge Area: Areas composed of permeable stratified sand and gravel or till and certain wetlands that collect precipitation or surface water and carry it to the aquifer.
- 12.37 Residence, Principal: The primary residence of an individual, family (as defined in this Bylaw), or property owner, i.e., the home where an owner, and the owner's family if applicable, resides as the primary dwelling; provided however, that no person shall hold concurrent rights in more than one (1) principal residence, as set forth under MGL Ch. 188, Section 1, as amended. Regular or periodic interruptions in residency shall not be considered to change the status of principal residence where such interruptions are the result of illness, catastrophe, professional or academic scheduling, or other temporary reasons for absence which do not affect basic indices of residency. For the purposes of this Bylaw, principal residency shall be determined by the Zoning Enforcement Officer, or the Permit Granting Authority or Special Permit Granting Authority, as may be applicable, based upon a preponderance of evidence, including but not limited to the following indices of residency and address, as applicable: declaration of homestead, filing of

state and federal income taxes, voter registration, annual street list, driver's license, motor vehicle registration, mortgage, mailing address, and telephone listing (if any).

- 12.38 Resident Manager: A live-in resident of a rental residential use qualified and responsible for implementation of the property management plan and for managing and coordinating the maintenance, housekeeping, and administrative duties for the rental units under their charge.
- 12.39 Restaurant: An establishment or part of an establishment devoted primarily to the service and consumption of food and beverages on the premises. Any such establishment shall be considered a restaurant if the service of food is its primary activity and the service of alcoholic beverages, if any, is incidental to the sale, service and consumption of food and non-alcoholic beverages.
- 12.40 Sign: Any fabricated or illuminated display structure, device or surface incorporating letters, numerals, figures, symbols or other graphic or design elements used for the visual attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine, merchandise or event, where such sign is displayed in any manner out of doors, or displayed indoors for the purpose of being viewed from the out of doors.
- 12.41 Sign, free standing: A sign supported permanently upon the ground by poles.



- 12.42 Sign, monument: A sign mounted either directly on the ground or on a wall that is situated on the ground.



- 12.43 Sign, projecting: A sign affixed to and projecting laterally, in whole or in part, from the side of a building, wall, or structure for a distance of at least 12 inches.
- 12.44 Special Permit Granting Authority: The Zoning Board of Appeals and the Planning Board are designated as the Special Permit Granting Authorities, as provided within the Articles of this Bylaw.
- 12.45 Street: An accepted public way, or a way which the Town Clerk certifies is maintained and used as a public way, or a way shown on a plan which has been approved and endorsed in accordance with the Subdivision Control Law, or a way in existence when the Subdivision Control Law became effective in the Town of Amherst having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting on the way.

- 12.46 Subdividable Dwelling: A building constructed for potential multi-family residential purposes as its principal use and having an external appearance and footprint substantially consistent with those of a one family detached dwelling. The internal construction design of the building allows for ease of both conversion into more dwelling units, and consolidation into fewer dwelling units, all within the maximum number established under Section 3.324 of this Bylaw.
- 12.47 Taxicab: A vehicle for hire garaged in Amherst and used for the conveyance of persons from any point of origin within the town of Amherst to any other location for a fee, whether hourly or by a taximeter; except livery vehicles as previously defined or a vehicle operated in a manner and for the purposes stated in Massachusetts General Laws, Chapter 159A.
- 12.48 Town House: A residential use consisting of one or more buildings containing no fewer than three nor more than ten (10) attached dwelling units, each of which has a separate private entrance on the ground level and where no building is more than three stories in height. Individual town house dwelling units extend from foundation to roof, and may consist of more than one floor, with each unit having fully exposed walls on at least two sides for access, light, and ventilation.
- 12.49 Toxic or Hazardous Substance: Any chemical substance or mixture of substances in a gaseous, liquid or solid state which is listed in the Massachusetts toxic or hazardous substance list compiled and maintained by the commissioner of the Massachusetts Department of Public Health in compliance with the provisions of M.G.L. Ch. 111F, section four, as amended, and which is manufactured, processed, used or stored in the workplace, but which shall not include alcoholic beverages as defined in MGL Ch. 138, Section one, or articles intended for personal consumption by employees in the workplace, or consumer articles packaged for distribution to, and used by, the general public, or articles sold or used in retail food establishments and all other retail trade establishments, exclusive of articles used in processing and repair areas, or substances being transported in interstate commerce.
- 12.50 Truck Terminal: A building or area in which freight brought by truck is assembled and/or stored for routing and reshipment or in which semi-trailers, including tractor and/or trailer units, and other trucks are parked or stored.
- 12.51 Upland Acreage: Lot area, not including watercourses, waterbodies, vernal pools, banks, or bordering or isolated vegetated wetland as defined by the Massachusetts Wetlands Protection Act Regulations 310 CMR 10.00, or the Amherst Wetlands Bylaw.
- 12.52 Waste: Any discarded material, or any material otherwise generated or produced as a by-product of any activity which is not intended for further use by the generator or producer.
- 12.53 Wastewater Treatment Works Subject to 314 CMR 5.00: Any wastewater treatment plants or works, including community septic systems, which require a groundwater discharge permit from the Massachusetts Department of Environmental Protection (DEP).
- 12.54 Watershed: Lands lying adjacent to water courses and surface water bodies which create the catchment or drainage areas of such water courses and bodies.
- 12.55 Wetlands: those lands defined as wetlands by the provisions of the Massachusetts Wetlands Act, M.G.L. Chapter 31, Section 40, as amended, and by the provisions of the General Bylaws of the Town of Amherst Massachusetts, Article II, General Regulations, Wetlands Protection, as amended.
- 12.56 Wireless Communications Facilities: Facilities used for the principal purpose of commercial or public wireless communications uses, such as cellular telephone services, enhanced specialized mobile radio services, microwave communications, personal wireless communications services, paging services and the like, as defined in Section 704 of the Federal Telecommunications Act of 1996, as amended. Such facilities shall include towers, antennae, antennae support structures, panels, dishes and accessory structures. For the purposes of this bylaw, wireless communications facilities do not include the following accessory uses or structures: antennae or dishes used solely for residential household television and radio reception; antennae or dishes used for commercial or public purposes which are not visible from any neighboring property or public way, or as set forth in Section 3.340.2.j., or dishes for these purposes measuring two (2) meters or less in diameter; nor amateur radio facilities, including towers under sixty-five (65) feet above ground,

actively used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission (FCC), provided that the tower is not used or licensed for any commercial use.

- 12.58 Zone I Recharge Area: That area encompassed by a circle extending around the wellhead of a public drinking water well, with the wellhead at its center and including all land within a 400 foot radius.
- 12.59 Zone II Recharge Area: That area of an aquifer which contributes water to a public drinking water well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield, with no recharge from precipitation). It is bounded by the groundwater divides which result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend up-gradient to its point of intersection with prevailing hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary).
- 12.60 Zone III Recharge Area: The land area beyond the area of Zone II from which surface water and groundwater drain into Zone II, as defined in 310 CMR 22.00, as amended.
- 12.61 Zoning Enforcement Officer: The Building Commissioner of the Town of Amherst.